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Optimum Fire Protection Service Company and Road Sprinkler Fitters Local Union No. 669, United Association of Journeymen and Apprentices of the Plumbing and Pipefitting Industry of the United States and Canada, AFL-CIO. Case 5–CA–32690

May 30, 2006

DECISION AND ORDER

BY CHAIRMAN BATTISTA AND MEMBERS KIRSANOW
AND WALSH

The General Counsel seeks a default judgment in this case on the ground that the Respondent has failed to file an answer to the complaint. Upon a charge filed by the Union on September 27, 2005, the Acting General Counsel issued the complaint on December 21, 2005 against Optimum Fire Protection Service Company, the Respondent, alleging that it has violated Section 8(a)(1) and (5) of the Act. The Respondent failed to file an answer.

On February 16, 2006, the General Counsel filed a Motion for Default Judgment with the Board. On February 22, 2006, the Board issued an order transferring the proceeding to the Board and a Notice to Show Cause why the motion should not be granted. The Respondent filed no response. The allegations in the motion are therefore undisputed.

The National Labor Relations Board has delegated its authority in this proceeding to a three-member panel.

Ruling on Motion for Default Judgment

Section 102.20 of the Board's Rules and Regulations provides that the allegations in a complaint shall be deemed admitted if an answer is not filed within 14 days from service of the complaint, unless good cause is shown. In addition, the complaint affirmatively stated that unless an answer was filed by January 4, 2006, all the allegations in the complaint would be considered admitted. Further, the undisputed allegations in the General Counsel's motion disclose that the Region, by letter dated January 10, 2006, notified the Respondent that unless an answer was received by January 20, 2006, a motion for default judgment¹ would be filed.

¹ The letter used the term "summary judgment." This terminology does not affect the result in this case because the Board routinely construes a motion requesting summary judgment on the ground that a respondent has failed to file an answer to a complaint as a motion for default judgment.

In the absence of good cause being shown for the failure to file a timely answer, we grant the General Counsel's Motion for Default Judgment.

On the entire record, the Board makes the following

FINDINGS OF FACT

I. JURISDICTION

At all material times, the Respondent, a Maryland corporation with an office and place of business in Knoxville, Maryland, has been engaged as a fire protection contractor in the construction industry, installing fire protection systems for commercial construction.

During the 12-month period preceding issuance of the complaint, a representative period, the Respondent, in conducting its business operations described above, performed services valued in excess of \$50,000 in states other than the State of Maryland.

We find that the Respondent is an employer engaged in commerce within the meaning of Section 2(2), (6), and (7) of the Act, and that Road Sprinkler Fitters Local Union No. 669, United Association of Journeymen and Apprentices of the Plumbing and Pipefitting Industry of the United States and Canada, AFL-CIO (the Union) is a labor organization within the meaning of Section 2(5) of the Act.

II. ALLEGED UNFAIR LABOR PRACTICES

At all material times, James Clark has held the position of the Respondent's president, and has been a supervisor of the Respondent within the meaning of Section 2(11) of the Act, and an agent of the Respondent within the meaning of Section 2(13) of the Act.

The following employees of the Respondent (the unit), constitute a unit appropriate for the purposes of collective bargaining within the meaning of Section 9(b) of the Act:

All Journeymen Sprinkler Fitters and Apprentices employed by Respondent, who are engaged in all work as set forth in Article 18 of the collective-bargaining agreement; but excluding office clerical employees, professional employees, guards and supervisors as defined in the Act.

Since about January 20, 2005, and at all material times, the Union has been the designated exclusive collective-bargaining representative of the unit and, since that date, the Union has been recognized as the representative by the Respondent. This recognition has been embodied in an agreement dated January 20, 2005, and in the collective-bargaining agreement effective from April 1, 2005 to March 31, 2007.

At all times since January 20, 2005, based on Section 9(a) of the Act, the Union has been the exclusive collective-bargaining representative of the unit.

On or about May 2, 2005, the Union, by letter, requested that the Respondent furnish the Union with the following information:

Regarding jobs and individuals worked by the Respondent from March 1, 2005 to the present:

(1) A listing of all jobs, including job name and specific job location, and indicating whether active, completed, or under contract.

(2) A listing of all individuals employed by the Respondent on the jobs listed in question 1 above, including their full name, address, job classification, hours worked, rate of pay, date of hire, date of termination (if applicable), amount of benefits paid, and travel expenses or subsistence received (if any).

Further, on or about June 7 and July 11, 2005, the Union, by letters, renewed its request for the information described above.

The information requested by the Union, as described above, is necessary for, and relevant to, the Union's performance of its duties as the exclusive collective-bargaining representative of the unit.

Since on or about May 2, 2005, the Respondent has failed and refused to furnish the Union with the requested information described above.

CONCLUSION OF LAW

By failing and refusing to furnish the Union with the information it requested in its letter dated May 2, 2005, the Respondent has failed and refused to bargain collectively and in good faith with the exclusive collective-bargaining representative of its unit employees, and has thereby engaged in unfair labor practices affecting commerce within the meaning of Section 8(a)(1) and (5) and Section 2(6) and (7) of the Act.

REMEDY

Having found that the Respondent has engaged in certain unfair labor practices, we shall order it to cease and desist and to take certain affirmative action designed to effectuate the policies of the Act. Specifically, having found that the Respondent has violated Section 8(a)(1) and (5) by failing and refusing to furnish the Union with information that is relevant and necessary to its role as the exclusive collective-bargaining representative of the unit employees, we shall order the Respondent to furnish the Union with the information it requested in its letter dated May 2, 2005.

ORDER

The National Labor Relations Board orders that the Respondent, Optimum Fire Protection Service Company, Knoxville, Maryland, its officers, agents, successors, and assigns, shall

1. Cease and desist from

(a) Failing and refusing to furnish Road Sprinkler Fitters Local Union No. 669, United Association of Journeymen and Apprentices of the Plumbing and Pipefitting Industry of the United States and Canada, AFL-CIO, with information necessary for and relevant to the performance of its duties as the exclusive collective-bargaining representative of the employees in the following appropriate unit:

All Journeymen Sprinkler Fitters and Apprentices employed by Respondent, who are engaged in all work as set forth in Article 18 of the collective-bargaining agreement; but excluding office clerical employees, professional employees, guards and supervisors as defined in the Act.

(b) In any like or related manner interfering with, restraining, or coercing employees in the exercise of the rights guaranteed them by Section 7 of the Act.

2. Take the following affirmative action necessary to effectuate the policies of the Act.

(a) Furnish the Union with the information it requested in its letter dated May 2, 2005.

(b) Within 14 days after service by the Region, post at its facility in Knoxville, Maryland, copies of the attached notice marked "Appendix."² Copies of the notice, on forms provided by the Regional Director for Region 5, after being signed by the Respondent's authorized representative, shall be posted by the Respondent and maintained for 60 consecutive days in conspicuous places, including all places where notices to employees are customarily posted. Reasonable steps shall be taken by the Respondent to ensure that the notices are not altered, defaced, or covered by any other material. In the event that, during the pendency of these proceedings, the Respondent has gone out of business or closed the facility involved in these proceedings, the Respondent shall duplicate and mail, at its own expense, a copy of the notice to all current employees and former employees employed by the Respondent at any time since May 2, 2005.

(c) Within 21 days after service by the Region, file with the Regional Director a sworn certification of a re-

² If this Order is enforced by a judgment of a United States court of appeals, the words in the notice reading "Posted by Order of the National Labor Relations Board" shall read "Posted Pursuant to a Judgment of the United States Court of Appeals Enforcing an Order of the National Labor Relations Board."

sponsible official on a form provided by the Region attesting to the steps that the Respondent has taken to comply.

Dated, Washington, D.C., May 30, 2006

Robert J. Battista, Chairman

Peter N. Kirsanow, Member

Dennis P. Walsh, Member

(SEAL) NATIONAL LABOR RELATIONS BOARD

APPENDIX

NOTICE TO EMPLOYEES

POSTED BY ORDER OF THE

NATIONAL LABOR RELATIONS BOARD

An Agency of the United States Government

The National Labor Relations Board has found that we violated Federal labor law and has ordered us to post and obey this notice.

FEDERAL LAW GIVES YOU THE RIGHT TO

Form, join, or assist a union

Choose representatives to bargain with us on your behalf

Act together with other employees for your benefit and

protection

Choose not to engage in any of these protected activities.

WE WILL NOT fail and refuse to furnish Road Sprinkler Fitters Local Union No. 669, United Association of Journeymen and Apprentices of the Plumbing and Pipefitting Industry of the United States and Canada, AFL-CIO, with information necessary for and relevant to the performance of its duties as the exclusive collective-bargaining representative of the employees in the following appropriate unit:

All Journeymen Sprinkler Fitters and Apprentices employed by us, who are engaged in all work as set forth in Article 18 of the collective-bargaining agreement; but excluding office clerical employees, professional employees, guards and supervisors as defined in the Act.

WE WILL NOT in any like or related manner interfere with, restrain, or coerce you in the exercise of the rights guaranteed you by Section 7 of the Act.

WE WILL furnish the Union with the information it requested by letter dated May 2, 2005.

OPTIMUM FIRE PROTECTION SERVICE COMPANY